

HUMAN SERVICES BOARD

INTRODUCTION

DISCUSSION

1. The petitioner is a disabled individual who is a client of a Community Access Program (CAP) in his area, which appears to operate as a contracted local service provider under the designation and auspices of DAIL.

2. Last summer CAP approved "transportation funding" under the petitioner's "waiver" for the purchase of a handicapped-adapted tractor that the petitioner uses to operate a farm on his property.

3. The petitioner purchased the tractor and has been using it for several months. The funding arm of CAP (which the petitioner refers to as "ARIS") made at least some monthly payments toward the tractor.

4. In early November, the petitioner received a phone call from the company that is financing the tractor advising him that it had not received the October payment toward the tractor.

5. In response to the petitioner's inquiries, CAP advised him by phone that DAIL had "reversed" CAP's approval of the waiver funds being used to pay for the tractor.

6. The finance company is threatening to repossess the tractor. The petitioner cannot return it because it has been "adapted" to meet his particular physical needs.

7. The petitioner received no verbal or written notice from CAP or DAIL that they were no longer making or approving the payments on the tractor.

At the status conference the Department could not provide any other information about the case. The hearing

officer ordered to Department to file a written response within one week advising the petitioner and the Board of its position in the matter and to provide the Board with copies of any written notices it or CAP may have given to the petitioner regarding any funding decisions made about the tractor. To date, the Department has not filed any response whatsoever.

ORDER

The Department's decision "reversing" its approval of the petitioner's tractor payments is declared null and void. The Department shall immediately make all past due and current installment payments on the tractor as originally approved. If the Department does not wish to continue making such payments in the future it must provide the petitioner with advance written notice of its decision that includes the petitioner's right to continuing benefits pending any appeal of that decision.

REASONS

A fundamental tenet of due process is that government agencies are required to give written notice to individuals in advance of any decision to terminate any public benefit or service, and that those individuals are entitled to a

continuation of their benefits or services until they are given an opportunity to file a timely appeal. Goldberg v. Kelly, 397 U.S. 254 (1970), Matthews v. Eldridge, 424 U.S. 319 (1976). Absent any claim or showing by the Department in this matter that it provided the petitioner with any notice whatsoever of the adverse decision it had apparently undertaken in his case, that decision must be reversed, and declared null and void at least until proper notice is provided.

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